

Exhibit 26

Mac Chonoles - 5/11/2022

1	IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION	3 2 1
3 JENNIFER HARRIS,	*	
	*	
4 Plaintiff,	*	
	* CIVIL ACTION	
5 vs.	* 4:21-cv-1651	
6 FEDEX CORPORATE SERVICES, INC.,	*	
	*	
7 Defendant.	*	
8	*****	
9	ORAL AND VIDEOTAPED DEPOSITION OF	
10	MAC CHONOLES	
11	MAY 11, 2022	
	(Conducted Remotely)	
12	*****	
13	ORAL AND VIDEOTAPED DEPOSITION OF MAC	
14	CHONOLES, produced as a witness at the instance of the	
15	Plaintiff, and duly sworn, was taken in the above-styled	
16	and -numbered cause on the 11th day of May, 2022, from	
17	10:08 a.m. EDT to 12:50 p.m. EDT, before Leah K. Osteen	
18	Dow, CSR in and for the State of Texas, reported	
19	remotely by machine shorthand, with the witness being	
20	located in Memphis, Tennessee, taken pursuant to the	
21	Federal Rules of Civil Procedure and any provisions,	
22	stipulations, or agreements stated on the record by	
23	counsel.	
24		
25		
		4
1	A P P E A R A N C E S (Appearing remotely)	
2		
3		
4 FOR THE PLAINTIFF:		
5 Ms. Elizabeth "BB" Sanford (videographer) THE SANFORD FIRM		
6 1910 Pacific Avenue		
7 Suite 15400		
8 Dallas, Texas 75201		
(214) 717-6653		
esanford@sanfordfirm.com		
9		
10		
11 FOR THE DEFENDANT:		
12 Mr. Barak J. Babcock FEDERAL EXPRESS CORPORATION		
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(301) 739-0512		
barak.babcock@fedex.com		
15		
16		
17		
18 ALSO PRESENT:		
19 Ms. Jennifer Harris		
20		
21		
22		
23		
24		
25		
		4
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1	P R O C E E D I N G S	
2	THE REPORTER: We are going on the record	
3	at 9:08 a.m., on May the 11th, 2022, for the deposition	
4	of Mac Chonoles, Chonoles --	
5	THE WITNESS: Chonoles.	
6	THE REPORTER: -- in the matter of Harris	
7	vs. FedEx.	
8	My name is Leah Osteen, Texas CSR 3916,	
9	reporting remotely from Hurst, Texas. The witness is	
10	located in Memphis, Tennessee.	
11	Would counsel state their appearances and	
12	any agreements for the record, and also identify anyone	
13	else in attendance.	
14	MS. SANFORD: BB Sanford for the	
15	Plaintiff, Jennifer Harris.	
16	And I believe we have come to the	
17	agreement that -- Mr. Chonoles has a stack of papers	
18	with him, and that's going to be all Exhibit 1 for us.	
19	And Barak Babcock, FedEx's attorney, is	
20	going to send that over to you, Leah --	
21	THE REPORTER: Okay.	
22	MS. SANFORD: -- for the exhibit.	
23	(Exhibit 1 referenced.)	
24	MR. BABCOCK: Barak Babcock for the	
25	Defendant.	

1 (Pages 1 to 4)

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<p style="text-align: right;">5</p> <p>1 Ms. Osteen, if you can send me your email 2 address. Do you want it by PDF, or do you want paper? 3 THE REPORTER: PDF is fine. 4 MR. BABCOCK: Or do you -- 5 THE REPORTER: PDF is fine. PDF. 6 MR. BABCOCK: And we'll try -- I do 7 have -- my assistant is in today, so hopefully we can 8 get that done today, but it will certainly be done in 9 the next little bit. We'll get it all scanned in. It 10 doesn't -- I don't think there's much color, so it 11 shouldn't be that big of a PDF.</p> <p>12 And then as I indicated in my April 6, 13 2022, email, FedEx asserts the use of the video 14 recording made in the Zoom platform as objectionable and 15 cannot be submitted to the Court or jury.</p> <p>16 And then I talked with Ms. Sanford prior 17 to going on the record. This is a 30(b)(6) deposition. 18 I'm going to object to form questions as a normal 19 deposition. I'm also going to object and say the phrase 20 "object, outside the scope." And we've agreed that 21 means that FedEx is objecting to the witness providing 22 30(b)(6) testimony on the question asked because we 23 believe it's outside the scope of what we designated the 24 witness to testify on behalf of FedEx for, but the 25 witness will be allowed to answer in the witness's</p>	<p style="text-align: right;">7</p> <p>1 Ms. Sanford? 2 MS. SANFORD: I don't -- I mean, so 3 normally what I do -- if you think it's outside of a 4 topic, I don't want to have to link every one of my 5 questions, go back and say, oh, that's two; oh, that's 6 ten. If you think it's outside of a topic, you can just 7 object and we can talk about it later.</p> <p>8 MR. BABCOCK: Okay. I'll just object, 9 outside the scope.</p> <p>10 Q. Okay. Mr. Chonoles, do you agree that a 11 company should supervise managers to follow 12 discrimination and retaliation laws?</p> <p>13 MR. BABCOCK: Object, outside the scope.</p> <p>14 A. From a personal perspective? I don't believe 15 so, no.</p> <p>16 Q. Why don't you believe so?</p> <p>17 A. Well, we -- we set up policies at the company 18 that work to prevent harassment, discrimination, and 19 retaliation, and we have expectations of conduct that 20 managers are to follow. And we have -- you know, we do 21 train our team members and all employees. And everybody 22 who works with FedEx, there's reporting mechanisms for 23 them to report issues. And when we do receive 24 complaints, we investigate them thoroughly and take 25 appropriate action.</p>
<p style="text-align: right;">6</p> <p>1 personal capacity. But just so I don't have to say all 2 that after every time I want to make that objection, 3 we've agreed that the phrase "object, outside the scope" 4 will mean that.</p> <p>5 THE REPORTER: Okay, sir, if you'll raise 6 your right hand, I'll swear you in.</p> <p>7 (Witness placed under oath.)</p> <p>8 MAC CHONOLE, 9 having been first duly sworn, testified as follows:</p> <p>10 EXAMINATION</p> <p>11 BY MS. SANFORD:</p> <p>12 Q. Good morning, Mr. Chonoles.</p> <p>13 A. Good morning.</p> <p>14 Q. My name is BB Sanford. I'll be the one 15 deposing you today. I'm just going to jump right in.</p> <p>16 Do you agree that a company should hire 17 qualified human resource managers?</p> <p>18 A. Yes.</p> <p>19 Q. Do you agree a company should adequately train 20 managers to follow discrimination and retaliation laws?</p> <p>21 A. Yes.</p> <p>22 Q. Do you agree that a supervisor -- excuse me, 23 that a company should supervise managers to follow 24 discrimination and retaliation laws?</p> <p>25 MR. BABCOCK: What topic are you on,</p>	<p style="text-align: right;">8</p> <p>1 So I don't feel it's something that we 2 should be supervising managers. Rather, we've set up an 3 environment that -- that self-monitors itself and that 4 we -- we oversee and address.</p> <p>5 Q. Do you agree that a corporation must prevent 6 discrimination and retaliation?</p> <p>7 MR. BABCOCK: Object, outside the scope.</p> <p>8 A. From a personal perspective, I believe that -- 9 that we work very hard to prevent all types of 10 discrimination, retaliation, and harassment. And we do 11 that through, as I mentioned, those established 12 processes that I just mentioned in my prior answer.</p> <p>13 Q. So it sounds like you work really hard to do 14 that, but do you think companies should prevent 15 discrimination and retaliation?</p> <p>16 A. Absolutely, yes.</p> <p>17 Q. Should corporations care about workplace laws?</p> <p>18 MR. BABCOCK: Form. Outside the scope.</p> <p>19 A. From a personal perspective, yes.</p> <p>20 Q. Do you agree that corporations should make sure 21 human resource representatives have the ability to act 22 with integrity, professionalism, and confidentiality?</p> <p>23 MR. BABCOCK: Object to the form.</p> <p>24 A. From a personal perspective, yes.</p> <p>25 Q. So when you say "from a personal perspective,"</p>

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<p style="text-align: right;">9</p> <p>1 you are not -- the company is not agreeing that human 2 resource representatives should act -- have the ability 3 to act with integrity, professionalism, and 4 confidentiality?</p> <p>5 A. I believe that -- yes, I believe that that is 6 the approach we take. That is the approach we take at 7 FedEx Services.</p> <p>8 Q. So to be clear, you're answering in your 9 personal capacity and as a corporate representative, you 10 agree with that last statement, true?</p> <p>11 A. Yes, yes.</p> <p>12 Q. Do you agree that a company should make sure 13 human resource representatives have a thorough knowledge 14 of employment-related laws and regulations?</p> <p>15 MR. BABCOCK: Object to the form. Object, 16 outside the scope.</p> <p>17 A. From a personal perspective, yes.</p> <p>18 Q. So you are not answering in your corporate 19 representative capacity; is that true?</p> <p>20 A. From my understanding, that if this is outside 21 the scope of, that I'm to answer from my personal 22 perspective.</p> <p>23 Q. So to be clear, FedEx is not going to answer 24 that a corporation should make sure human resource 25 representatives have a thorough knowledge of</p>	<p style="text-align: right;">11</p> <p>1 A. I am answering on a personal perspective, as -- 2 as the attorney said that that was outside of the scope.</p> <p>3 Q. And therefore you are not answering on behalf 4 of FedEx, true?</p> <p>5 A. That's correct.</p> <p>6 Q. Do you agree that corporations should make sure 7 human resource representatives have strong analytical 8 and problem-solving skills?</p> <p>9 MR. BABCOCK: Object to the form.</p> <p>10 A. From a personal perspective, yes.</p> <p>11 Q. It's true that FedEx is refusing to answer 12 whether or not corporations should make sure human 13 resource representatives have strong analytical and 14 problem-solving skills; is that fair?</p> <p>15 MR. BABCOCK: No. I objected to the form. 16 The witness can answer that question.</p> <p>17 MS. SANFORD: The witness said from a 18 personal perspective.</p> <p>19 Q. So, Mr. Chonoles, is FedEx or you agreeing that 20 a human resource representative should have strong 21 analytical and problem-solving skills?</p> <p>22 MR. BABCOCK: Object to the form.</p> <p>23 A. From a personal perspective, the answer to that 24 is yes.</p> <p>25 Q. Is FedEx refusing to answer whether it thinks</p>
<p style="text-align: right;">10</p> <p>1 employment-related laws and regulations; is that true?</p> <p>2 MR. BABCOCK: What topic does it cover?</p> <p>3 Q. Is that true or --</p> <p>4 MR. BABCOCK: Can you reference me to the 5 topic, Ms. Sanford?</p> <p>6 MS. SANFORD: Yeah. So you can object to 7 outside the scope or --</p> <p>8 MR. BABCOCK: Well, I --</p> <p>9 MS. SANFORD: It's going to take a long 10 time if we're going to go through every -- this one goes 11 to a number of them. Policies and procedures. Any 12 number of the policy and procedure ones. Yeah, any of 13 the ones, policies and procedures.</p> <p>14 MR. BABCOCK: Yeah, I'm going to object. 15 That's outside the scope as that question is phrased.</p> <p>16 Q. So, for the record, Mr. Chonoles, FedEx is not 17 going to answer whether or not it thinks a corporation 18 should make sure human resource representatives have a 19 thorough knowledge of employment-related laws and 20 regulations; is that true?</p> <p>21 MR. BABCOCK: Object to the form.</p> <p>22 A. I can answer from a personal perspective on -- 23 on that, that question.</p> <p>24 Q. And you refuse to answer on behalf of FedEx, 25 true?</p>	<p style="text-align: right;">12</p> <p>1 human resource representatives should have strong 2 analytical and problem-solving skills?</p> <p>3 MR. BABCOCK: Object to the form.</p> <p>4 Mr. Chonoles, there's a difference between 5 object to the form and object to outside the scope.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. BABCOCK: Okay? If I object to the 8 form, I'm objecting to some part of the question, and 9 that's between Ms. Sanford and me and a judge in the 10 future.</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. BABCOCK: So you can go ahead and 13 answer questions --</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. BABCOCK: -- unless I object outside 16 the scope. All right?</p> <p>17 THE WITNESS: Outside scope? Okay. All 18 right.</p> <p>19 A. So from that perspective, yes. From a company 20 perspective, we do -- the answer to that question is 21 yes.</p> <p>22 Q. Do you agree that corporations should make sure 23 human resource representatives have the ability to 24 prioritize tasks and delegate them when appropriate?</p> <p>25 MR. BABCOCK: Object to the form.</p>

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<p style="text-align: right;">13</p> <p>1 A. Yes. 2 Q. Do you agree that a company should train its 3 managers to prevent discrimination and retaliation by, 4 number one, defining discrimination and retaliation and 5 state that those are illegal and they will not be 6 tolerated? 7 MR. BABCOCK: Object to the form. 8 A. Could you repeat the question for me, please? 9 Q. Sure. Do you believe that a corporation should 10 train its managers of the ways a company should be able 11 to define discrimination and retaliation and state that 12 they are illegal and will not be tolerated? 13 MR. BABCOCK: Object to the form. 14 A. Yes. 15 Q. Do you agree that a corporation should -- 16 should review the company's policies regarding 17 discrimination and retaliation? 18 MR. BABCOCK: Object to the form. 19 A. Yes. 20 Q. Do you agree that the company should ensure 21 that managers understand the responsibility not to 22 discriminate or retaliate? 23 MR. BABCOCK: Object to the form. 24 A. Yes. 25 Q. Do you agree that corporations should ensure</p>	<p style="text-align: right;">15</p> <p>1 It was a bad question. 2 Do you agree that corporations must 3 supervise managers to follow discrimination and 4 retaliation laws by monitoring the workplace? 5 MR. BABCOCK: Object to the form. 6 A. No. 7 Q. Do you agree that a company should investigate 8 complaints of discrimination and retaliation? 9 MR. BABCOCK: Object to the form. 10 A. Yes. 11 Q. Do you agree that a company should keep records 12 of all investigations and complaints of discrimination 13 and retaliation? 14 MR. BABCOCK: Object to the form. 15 A. Yes. 16 Q. Do you agree that a company should analyze the 17 information it receives as part of the investigation and 18 complaints of discrimination and retaliation? 19 MR. BABCOCK: Object to the form. 20 A. Yes. 21 Q. Do you agree that a company should reward 22 compliance of those who follow the discrimination and 23 retaliation laws and policies? 24 MR. BABCOCK: Object to the form. 25 A. Could you repeat the question for me, please?</p>
<p style="text-align: right;">14</p> <p>1 that managers understand how to investigate, stop, and 2 correct discrimination and retaliation? 3 A. I'm sorry. Could you repeat that one more time 4 for me? 5 Q. Do you agree that a corporation should ensure 6 that managers understand how to investigate, stop, and 7 correct discrimination and retaliation? 8 MR. BABCOCK: Object to form. 9 A. Yes, but, you know, I think as far as from an 10 investigation standpoint, we don't train managers to 11 conduct workplace investigations that involve that, 12 those types of matters. We -- it's the HR department 13 that conducts investigations. 14 Q. Do you agree that a company should explain the 15 consequences of violating the company's policies against 16 discrimination and retaliation? 17 MR. BABCOCK: Object to the form. 18 A. Yes. 19 Q. So you may disagree with this one because of 20 your prior answer. I'm not sure. 21 Do you agree that a company should monitor 22 the workplace? 23 MR. BABCOCK: Object to the form. 24 A. Can you -- 25 Q. Excuse me. Let me rephrase that. Yeah, sure.</p>	<p style="text-align: right;">16</p> <p>1 Q. Do you think a company should reward compliance 2 for those who follow the discrimination and retaliation 3 laws and policies? 4 MR. BABCOCK: Object to the form. 5 A. That's kind of a -- no, I don't believe so. 6 Q. Some examples of monitoring the workplace 7 include installing cameras, unannounced inspections, 8 anonymous surveys, and conducting exit interviews. 9 Do you agree or disagree? 10 MR. BABCOCK: Object to the form. 11 A. Yes. 12 MR. BABCOCK: I think it's outside of the 13 scope, too. 14 A. From a -- 15 MR. BABCOCK: Mr. Chonoles, you don't have 16 to say "from a personal" -- 17 THE WITNESS: Okay. 18 MR. BABCOCK: -- answer. The lawyers know 19 what the objection means. 20 THE WITNESS: Okay. 21 MR. BABCOCK: And you answered the 22 question. 23 THE WITNESS: Yes. 24 Q. When investigating a complaint of 25 discrimination or retaliation based on race, do you</p>

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<p style="text-align: right;">17</p> <p>1 consider race-related statements made by decision-makers 2 or persons influential to the decision? 3 MR. BABCOCK: Object to the form. 4 A. Yes. 5 Q. Do you consider comparative-treatment evidence 6 when investigating complaints of discrimination or 7 retaliation? 8 MR. BABCOCK: Object to the form. 9 A. Yes. 10 Q. Do you consider relevant background facts when 11 investigating complaints of discrimination or 12 retaliation? 13 A. Yes. 14 Q. Do you consider relevant personnel policies 15 when investigating complaints of discrimination or 16 retaliation? 17 A. Yes. 18 Q. Do you consider the decision-maker's race when 19 investigating complaints of race discrimination and 20 retaliation? 21 MR. BABCOCK: Object to the form. 22 A. No. 23 Q. Why not? 24 A. Discrimination can occur regardless of the race 25 of the alleged party, named party, or -- or the victim.</p>	<p style="text-align: right;">19</p> <p>1 the investigation, true? 2 A. True. 3 Q. It should also develop interview questions, 4 true? 5 A. True. 6 Q. Should conduct interviews, true? 7 A. True. 8 Q. Then make a decision, true? 9 A. True. 10 Q. Then close the investigation, true? 11 A. True. 12 Q. And then develop written summary investigation 13 results, true? 14 A. True. 15 Q. Mr. Chonoles, it's true that Jennifer Harris is 16 an African American or black woman, yes? 17 A. Yes, that is correct. 18 Q. And race is a protected class, true? 19 A. True. 20 Q. So Jennifer Harris is in a protected class, 21 true? 22 A. True. 23 Q. Do you agree that Jennifer Harris was qualified 24 for her job as a district sales manager? 25 MR. BABCOCK: Object to form. I'm going</p>
<p style="text-align: right;">18</p> <p>1 Primarily the alleged party in this -- based on your 2 question. 3 Q. Do you consider statistical evidence when 4 looking at -- sorry -- when investigating complaints of 5 discrimination or retaliation? 6 MR. BABCOCK: Object to the form. 7 A. I'm not sure what you mean about -- could you 8 provide an example for what you mean is "statistical" 9 information? 10 Q. Statistics like how many complaints have been 11 brought against a certain person before; or in a 12 department, how many complaints have been brought in 13 this department before. Things like that. 14 A. Thank you. Yes, we do. 15 Q. To conduct a fair investigation, an employer 16 should ensure confidentiality, true? 17 A. True. 18 Q. To conduct a fair investigation, an employer 19 should provide interim protection for the complainant, 20 true? 21 A. True. 22 Q. To conduct a fair investigation, an employer 23 should select an investigator, true? 24 A. Yes, true. 25 Q. And then an employer should create a plan for</p>	<p style="text-align: right;">20</p> <p>1 to object it's outside the scope. 2 Go ahead and answer. Sorry. 3 A. I have not evaluated her qualifications for the 4 position. 5 Q. Have you ever seen FedEx hire an unqualified 6 district sales manager? 7 A. No. 8 Q. It's true Jennifer Harris was terminated by 9 FedEx, yes? 10 A. True. 11 Q. She was replaced by Virginia Solgot; is that 12 true? 13 MR. BABCOCK: Object to the form. It's 14 outside the scope. 15 A. I'm not aware. 16 Q. Do you know who Jennifer Solgot is? 17 A. I am not familiar. I have not prepared, as 18 part of my deposition, for that answer. 19 Q. So you don't know who she is; is that -- is 20 that true? 21 A. No. 22 Q. It's true that Jennifer Harris made a complaint 23 of discrimination and retaliation, yes? 24 A. True. 25 Q. Mr. Chonoles, what is your job title?</p>

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<p style="text-align: right;">21</p> <p>1 A. Manager, human resources. 2 Q. And what does your job description -- what do 3 you do? 4 A. I am responsible for leading a team that 5 conducts workplace investigations along with some other 6 HR activities. 7 Q. What other activities? 8 A. Those include running a U.S. immigration 9 program, HR customer service, unemployment program, 10 emergency contingency planning. 11 Q. I'm going to share my screen with you. 12 So it's my understanding from talking to 13 other human resource professionals at FedEx, like 14 Michael Clark, that under that HR department, there's 15 employee resolutions department and a business 16 consulting department. 17 Is that true? 18 MR. BABCOCK: Object, outside the scope. 19 A. Yes, that's true. 20 Q. Are there any other main HR departments, like 21 payroll or ... 22 MR. BABCOCK: Objection, outside the 23 scope. 24 A. Yes, there are. 25 Q. Could you list some of those for me, or list</p>	<p style="text-align: right;">23</p> <p>1 The only HR department at FedEx that 2 conducts investigations of complaints of discrimination 3 or retaliation is the employee resolutions department, 4 true? 5 A. True. 6 Q. All right. And -- oops, excuse me. 7 All right. I'm showing you an org chart 8 that I did with Michael Clark the other day. I just 9 want to double-check it with you. I can zoom in. 10 So it starts with -- HR strategic advisors 11 have no direct reports, true? 12 MR. BABCOCK: Object to the org chart line 13 of questions as outside the scope. I don't want to 14 interrupt you, Ms. Sanford. 15 Is that all right? 16 MS. SANFORD: Yes, that's fine. 17 A. True. 18 Q. And Michael Clark is an HR strategic advisor, 19 true? 20 A. True. 21 Q. There are six HR strategic advisors? 22 A. No. 23 Q. How many HR advisors are there? 24 A. I'd have to refer to notes. I believe I have 25 total of ten employees. Of those, as of today, I have</p>
<p style="text-align: right;">22</p> <p>1 them? 2 MR. BABCOCK: Same objection. 3 A. We have a talent acquisition. 4 MR. BABCOCK: Mac, can you see what she's 5 writing? Do you know you can -- 6 THE WITNESS: Yeah. 7 MR. BABCOCK: -- use your mouse to move 8 the windows? 9 THE WITNESS: Yeah. 10 MR. BABCOCK: Okay. 11 A. We have a compensation, organizational 12 effectiveness, talent management. We've got, let's see, 13 data analytics. And these are under -- in my VP's 14 organizations. That's -- I believe that is complete. 15 There are -- yeah. 16 Q. Under your -- what did you say? Your VP? 17 A. Those are the organizations under my VP's 18 organization. 19 Q. And VP of HR? 20 A. Uh-huh, yes. 21 Q. And what's that person's name? 22 A. Mike Lauderdale. 23 Q. How do you spell "Lauderdale"? 24 A. L-a-u-d-e-r-d-a-l-e. 25 Q. Thank you.</p>	<p style="text-align: right;">24</p> <p>1 two strategic advisors and then a mix of -- and -- and 2 as far as -- this is including the red -- this is 3 including my entire team, which extends beyond 4 investigations as well. Two strategic advisors. Both 5 of them work in the employee resolutions area. 6 Q. And then the rest of the eight employees are 7 not strategic advisors? 8 A. That's correct, as of today. 9 Q. As of 2017 to 2019, is that the same? 10 A. That is -- I've had two consistently. 11 Q. Okay. So all of these people (indicating) 12 report to you? Yes? 13 A. Correct. 14 Q. Could you describe the basic job functions of 15 your other eight employees, just generally? 16 A. Generally speaking, I've got -- let me 17 calculate that in my head here just to make sure I've 18 got that right. 19 So, generally speaking, with the exception 20 of two of those employees, the rest of those 21 employees -- so out of the ten, eight of them work in 22 the employee resolutions space or conduct workplace 23 investigations. The other two conduct HR support 24 functions and run processes and programs. 25 Q. So how many -- I'm a little confused. How</p>

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<p style="text-align: right;">25</p> <p>1 many -- how many of your employees conduct 2 investigations at FedEx? 3 A. Should be eight. Eight employees conduct 4 investigations. 5 Q. What is their job title for the employees that 6 conduct investigations? 7 A. There's HR strategic advisor, HR advisor, and 8 an HR generalist are the three titles. 9 Q. Okay. HR strategic advisor, HR generalist. 10 And what was the third? 11 A. HR advisor. 12 Q. You have two strategic advisors. 13 How many generalists do you have? 14 A. One. 15 Q. And how many advisors do you have? 16 A. Five. 17 Q. All right. So eight employees at FedEx conduct 18 investigations, true? 19 A. You had mentioned EEO investigations. So, yes, 20 eight conduct EEO investigations. 21 Q. And it's my understanding from talking to 22 Michael Clark that everyone offices at the Collierville, 23 Tennessee, office. 24 Is that true? 25 A. No, that's not true.</p>	<p style="text-align: right;">27</p> <p>1 No FedEx employee who conducts EEO 2 investigations offices in Texas, true? 3 A. That's true. 4 Q. Is Kathie Walthall a peer to you? 5 A. She is. 6 Q. And then is it true that you report to Adrian 7 Webster, the director of HR? 8 A. That's true. 9 Q. And the next person in the chain of command is 10 VP of HR, Mike -- what was his last name? 11 A. Lauderdale. 12 Q. So that's true? 13 A. That's true. 14 Q. And Mike Lauderdale reports to SVP of HR? Yes? 15 A. Correct. 16 Q. And what is his name? 17 A. Chris Winton. 18 Q. How do you spell that last name? 19 A. I believe he -- W-i-n-t-o-n. I believe he may 20 be a CVP, corporate vice president, not an SVP. 21 Q. And then does Mr. Winton report to the CEO of 22 FedEx? 23 A. That's true. 24 Q. And Kathie Walthall also reports to Adrian 25 Webster?</p>
<p style="text-align: right;">26</p> <p>1 Q. Where does everyone office? 2 A. I've got -- let's see. Michael is officed out 3 of there. I have one team member out of Harrison, 4 Arkansas. 5 Q. Okay. Are the rest in Tennessee? 6 A. Yes. 7 Q. So just talking about ... 8 A. And that's -- just for your reference, it's 9 "AR." 10 Q. Oh, thank you. 11 MR. BABCOCK: There might be a Harrison, 12 Alaska. 13 THE WITNESS: There may be. That's why I 14 thought I'd bring it up. 15 Q. There are no EEO investigators at FedEx who 16 office in Texas, true? 17 A. On my team, yes, that's correct. 18 Q. Are there any other teams at FedEx who conduct 19 investigations? 20 MR. BABCOCK: Object to the form. 21 A. Kathie Walthall's team will conduct 22 investigations into matters that don't involve EEO type 23 of issues. 24 Q. All right. So no employee -- let me try to 25 rephrase that better.</p>	<p style="text-align: right;">28</p> <p>1 A. That's true. 2 Q. Okay. Is Kathie Walthall also in the employee 3 resolutions department? 4 A. She's in the employee relations organization 5 under Adrian Webster. Her official organization title's 6 name is business consulting. 7 Q. I'll share my screen again. 8 MR. BABCOCK: Ms. Sanford, are we off the 9 org chart? 10 MS. SANFORD: Yes. 11 MR. BABCOCK: Okay. Thank you. 12 Q. I'm showing you FedEx's policy and procedure 13 labeled "Anti-Harassment." Do you see that? 14 A. Yes. 15 Q. It starts on Bates label 1273. It states that 16 FedEx Corporate Services, Inc., does not tolerate any 17 form of harassment based on race. 18 Do you see that? 19 A. I do. 20 Q. And do you agree that FedEx does not tolerate 21 harassment based on race? 22 A. I do. 23 Q. The next page, it says the same thing about 24 retaliation. FedEx Services will not tolerate any 25 retaliatory action against any employee for making a</p>

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<p style="text-align: right;">29</p> <p>1 harassment complaint. 2 Do you see that and agree with that? 3 MR. BABCOCK: I can't see it, but maybe 4 you can. 5 A. I can see it, and -- 6 MR. BABCOCK: Okay. 7 A. -- agree with it. 8 Q. Do you see where it states, "Before the 9 resolution of any discrimination or harassment 10 complaint, an employee may not be involuntarily 11 transferred, reassigned, or subjected to any 12 disciplinary action without concurrence from Human 13 Resources and Legal"?</p> <p>14 A. I do see that. 15 Q. What does "concurrence" mean? 16 A. Without -- from -- it means to -- agreement 17 between -- with human resources. So there has to be a 18 consultation agreement. 19 Q. The next policy is the equal employment 20 opportunity policy that I'm showing you, Bates-labeled 21 1275. It says one of the human resources roles is to 22 investigate complaints. 23 Do you see that? 24 A. Yes. 25 Q. There is no -- it doesn't look like to me in</p>	<p style="text-align: right;">31</p> <p>1 complaint process. 2 Do you see that? 3 A. I do. 4 Q. I'll zoom in. It states again FedEx does not 5 tolerate discrimination based on race. 6 Do you see that? 7 A. I do. 8 Q. Because it's the law. 9 Do you see that? 10 MR. BABCOCK: Object to the form. 11 Q. Or do you -- sorry. Let me the rephrase. 12 Do you agree that it is the law to not 13 discriminate based on race? 14 A. Yes. 15 Q. And it's FedEx's intention to prevent 16 discrimination, true? 17 A. True. 18 Q. Same for retaliation. FedEx will not tolerate 19 any retaliatory action, true? 20 A. True. 21 Q. It is FedEx's intention to prevent retaliation, 22 true? 23 A. True. 24 Q. So I want to ask about the investigations 25 again. I want to show you the second page, where it</p>
<p style="text-align: right;">30</p> <p>1 this policy there is a policy that says how to 2 investigate complaints. 3 Is that fair? 4 A. That is correct, yes. Let me take a look at -- 5 can you go back to the prior page, please? 6 Q. Sure. 7 A. Yes, that's correct. 8 Q. I'm now showing you the "Explore - A Complaint 9 Review Process" policy and procedure. It starts on 10 Bates label 1277. 11 Do you see that? 12 A. I do. 13 Q. It looks like on this first page it doesn't 14 talk about investigations, or on the second page. 15 Is that fair? 16 A. I'd like to refer to -- can you go back to that 17 prior page and zoom out? 18 Q. (Complies.) 19 A. And could you move to the next page, please? 20 Q. (Complies.) 21 A. There are some very high-level guidelines 22 around the investigation process, but it doesn't dictate 23 how investigations are to be accomplished. 24 Q. The next policy I'm showing you starts on Bates 25 label 1279. It's the internal EEO discrimination</p>	<p style="text-align: right;">32</p> <p>1 talks about investigations. But the first page does not 2 talk about how to conduct an investigation. 3 Is that fair? 4 A. That's fair. 5 Q. The second page, it looks like the -- one, two, 6 three -- fourth paragraph down is the only paragraph 7 that talks about how to conduct an investigation. 8 Is that fair? 9 A. True. I would add to that the third-party 10 representation is also a guideline related to 11 investigation process. 12 Q. So just to talk about that third-party 13 representation, it says, "During the internal review 14 process, attorneys are not permitted to serve as 15 advocates on behalf of employees, nor appear on behalf 16 of employees or former employees. Attorneys or other 17 such representatives must be directed to contact legal. 18 No third party is permitted to participate in any manner 19 in the internal complaint procedure." 20 Did I read that correctly? 21 A. You did. 22 Q. Is it fair to say that section says attorneys 23 aren't allowed for internal complaint investigations? 24 A. That's true. 25 Q. So it doesn't talk about how to conduct an</p>

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<p style="text-align: right;">33</p> <p>1 investigation, true?</p> <p>2 A. True.</p> <p>3 Q. Looking at the paragraph labeled</p> <p>4 "Investigation," it states, "An e-mail designating all</p> <p>5 communications as 'Privileged and Confidential' must be</p> <p>6 received from Legal before initiating an investigation</p> <p>7 of any employee discrimination issues."</p> <p>8 Did I read that correctly?</p> <p>9 A. You did.</p> <p>10 Q. So step one, it looks like legal sends an email</p> <p>11 designating everything as privileged and confidential?</p> <p>12 Is that fair? That's step one?</p> <p>13 A. That -- that is correct.</p> <p>14 Q. The next sentence states, "The Director of the</p> <p>15 employee submitting the complaint is typically</p> <p>16 responsible for the investigation and the content of the</p> <p>17 report, and is accountable for meeting the timeframes</p> <p>18 established for the process."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. It goes on to say, "Should complainant make</p> <p>22 allegations against the Director, the investigation will</p> <p>23 be conducted by appropriate leadership. Timeframes are</p> <p>24 generally within 30 days depending upon the complexity</p> <p>25 of the investigation."</p>	<p style="text-align: right;">35</p> <p>1 action policy.</p> <p>2 Is there any other policy that speaks</p> <p>3 about how to conduct an investigation that I haven't</p> <p>4 shown you?</p> <p>5 A. No, not that I can think of.</p> <p>6 Q. Mr. Chonoles, would you describe your training</p> <p>7 from FedEx about discrimination and retaliation,</p> <p>8 conducting investigations surrounding discrimination and</p> <p>9 retaliation?</p> <p>10 MR. BABCOCK: Object to the form; and,</p> <p>11 object, that's outside the scope.</p> <p>12 Go ahead and answer.</p> <p>13 A. So as far as my training from FedEx, they</p> <p>14 provided me funds in order to get a -- complete a course</p> <p>15 related to preparation for certification of -- the SHRM</p> <p>16 SCP certification. I obtained certification in 2007</p> <p>17 which extended through, I believe, 20- -- 2011.</p> <p>18 I worked with experienced HR advisors on</p> <p>19 my team to learn the investigation process. I</p> <p>20 participated in Management Practices and the Law when I</p> <p>21 became a manager and conduct- -- and went through</p> <p>22 refresher training when I took on this -- this role</p> <p>23 leading this team.</p> <p>24 And so, yes. So those are some of the</p> <p>25 forms of preparation that -- for this role.</p>
<p style="text-align: right;">34</p> <p>1 Did I read that correctly?</p> <p>2 A. You did.</p> <p>3 Q. Do you see anywhere that it says an HR</p> <p>4 representative should -- will conduct an investigation?</p> <p>5 A. Not in that paragraph.</p> <p>6 Q. It says the director of the employee.</p> <p>7 Is that a non-HR professional?</p> <p>8 A. That is not -- the director is not an HR</p> <p>9 professional; however, HR is a support organization, and</p> <p>10 HR conducts all EEO investigations. They conduct the</p> <p>11 investigations in support of the director or the</p> <p>12 appropriate level of leadership. And so we conduct the</p> <p>13 investigation. We provide findings and recommendations</p> <p>14 to them, to that member of leadership.</p> <p>15 Q. But that is not what -- I mean, that's not what</p> <p>16 this policy says, right?</p> <p>17 A. That is correct.</p> <p>18 Q. So there's another policy that you're talking</p> <p>19 about?</p> <p>20 A. No. That is -- what I'm referring to is</p> <p>21 practice. This is not an all-inclusive description of</p> <p>22 the investigation process, but it is a high-level</p> <p>23 expectation on who conducts the investiga- -- or who's</p> <p>24 involved in the investigation from the business.</p> <p>25 Q. I'm showing you the progressive corrective</p>	<p style="text-align: right;">36</p> <p>1 Also, attended a training with our</p> <p>2 in-house legal counsel on multiple occasions related to</p> <p>3 investigation process and the reporting process. And I</p> <p>4 have regular ongoing discussions with -- with my legal</p> <p>5 counsel related to all matters where I have questions</p> <p>6 related to the investigations that I'm personally</p> <p>7 investigating.</p> <p>8 Q. The training with legal about investigation</p> <p>9 process and reporting processes, did that come with any</p> <p>10 PowerPoint slides, any type of materials?</p> <p>11 A. The attorneys do prepare materials and do share</p> <p>12 that with us while we're in the class.</p> <p>13 Q. And you rely on that as a part of your</p> <p>14 investigations?</p> <p>15 A. I utilize it and absorb that material during</p> <p>16 the course. And I don't know if I -- I'm sure -- I</p> <p>17 haven't had a need to go back for the material, but --</p> <p>18 but, yes, I utilize that.</p> <p>19 Q. Let me ask you, do you have any degrees, post</p> <p>20 high school degrees?</p> <p>21 A. Yes.</p> <p>22 Q. And what are those?</p> <p>23 MR. BABCOCK: Object. It's outside the</p> <p>24 scope.</p> <p>25 But go ahead and answer this line of</p>

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<p style="text-align: right;">37</p> <p>1 question, sir.</p> <p>2 A. I have a bachelor's degree in business</p> <p>3 administration with an emphasis in human resources from</p> <p>4 Regis University in Denver, Colorado.</p> <p>5 Q. Are you from Colorado?</p> <p>6 A. I am.</p> <p>7 Q. What part?</p> <p>8 A. I lived in Aurora. I've lived everywhere, but</p> <p>9 Aurora was ...</p> <p>10 Q. I'm in Steamboat right now, actually.</p> <p>11 A. Love that area.</p> <p>12 Q. Do you have any other degrees?</p> <p>13 A. No.</p> <p>14 Q. And do you have any current HR certifications?</p> <p>15 MR. BABCOCK: Object as outside the scope.</p> <p>16 Go ahead and answer.</p> <p>17 A. No.</p> <p>18 Q. But you did have an HR certification from 2007</p> <p>19 to 2011, yes?</p> <p>20 A. I believe those are the dates, yes.</p> <p>21 Q. Is that your SHRM SCP certification?</p> <p>22 A. That's correct.</p> <p>23 Q. How long have you been an HR manager, or when</p> <p>24 did you -- let me rephrase that. When did you first</p> <p>25 come into the role as HR manager?</p>	<p style="text-align: right;">39</p> <p>1 A. Yes.</p> <p>2 Q. And when did you start that role?</p> <p>3 A. I believe that was April of 2007.</p> <p>4 Q. And what about before that?</p> <p>5 A. Before that, I was a senior sales analyst.</p> <p>6 Q. At FedEx?</p> <p>7 A. Yes.</p> <p>8 Q. And what time frame were you a senior sales</p> <p>9 analyst at FedEx?</p> <p>10 A. I believe that was sometime in 2004.</p> <p>11 Q. Before that, what did you do?</p> <p>12 A. Director admin at FedEx.</p> <p>13 Q. What time frame?</p> <p>14 A. Would have been June 2002.</p> <p>15 Q. And anything before that?</p> <p>16 A. Outside of FedEx?</p> <p>17 Q. Was that when you first started at FedEx, was</p> <p>18 2002?</p> <p>19 A. That's when I first started at FedEx, yeah.</p> <p>20 Q. So prior to FedEx, were you in an HR role?</p> <p>21 A. No.</p> <p>22 Q. So how long would you say you have been in the</p> <p>23 HR industry, working in the HR industry?</p> <p>24 A. Twelve years.</p> <p>25 Q. So when you said you took the Management</p>
<p style="text-align: right;">38</p> <p>1 MR. BABCOCK: I have a standing objection,</p> <p>2 Ms. Sanford, that's outside the scope, his history and</p> <p>3 all that stuff. Is that a yes?</p> <p>4 MS. SANFORD: Yes, I knowledge that you</p> <p>5 have a standing objection. That's fine.</p> <p>6 MR. BABCOCK: Okay. Thank you.</p> <p>7 A. I believe it was 2013 that I became an HR</p> <p>8 manager.</p> <p>9 Q. And so in 2013 you became the HR manager.</p> <p>10 That's when you took your refresher training that you</p> <p>11 were speaking about, true?</p> <p>12 A. Yes, 2013 or 2014.</p> <p>13 Q. What was your prior role?</p> <p>14 A. I was an HR strategic advisor.</p> <p>15 Q. And what dates were you an HR strategic</p> <p>16 advisor?</p> <p>17 A. I believe it was September 2010 is when I</p> <p>18 became an HR strategic advisor.</p> <p>19 Q. Did you say September 2010?</p> <p>20 A. Yes.</p> <p>21 Q. And before that, what was your job title?</p> <p>22 A. I believe I was a -- what was the exact title?</p> <p>23 It was -- it was a project manager role. I think it was</p> <p>24 a solutions strategic advisor.</p> <p>25 Q. At FedEx?</p>	<p style="text-align: right;">40</p> <p>1 Practices and Law course, when did you take that? When</p> <p>2 you were a strategic advisor, HR strategic advisor?</p> <p>3 A. Back in -- around -- Management Practice and</p> <p>4 the Law, I would have taken that actually when I became</p> <p>5 an HR strategic advisor the first time, sometime around</p> <p>6 September 2010.</p> <p>7 Q. Okay. So you have -- you took a course to get</p> <p>8 your SHRM certification; you had a SHRM certification</p> <p>9 but expired in 2011; you worked with experienced HR</p> <p>10 advisors; you took a Management Practices and Law course</p> <p>11 in 2010 when you became an HR strategic advisor; you</p> <p>12 took a refresher training when you became an HR manager</p> <p>13 in 2013 or 2014; and you have attended training with</p> <p>14 legal about investigation processes and reporting</p> <p>15 processes sporadically.</p> <p>16 Is that true?</p> <p>17 MR. BABCOCK: Object to the form.</p> <p>18 A. Yes. I would add to that I've also attended a</p> <p>19 law conference at the Memphis SHRM in 2019, I believe it</p> <p>20 was. And I also attended a law -- Ogletree law seminar</p> <p>21 in Chicago in 2016.</p> <p>22 Q. Ogletree Deakins, the defense employment law</p> <p>23 firm?</p> <p>24 A. That's correct.</p> <p>25 Q. Sorry. What year did you take that?</p>

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<p style="text-align: right;">41</p> <p>1 A. I believe in 2016. 2 Q. Why are you taking a law seminar class at an 3 employer defense law firm? 4 MR. BABCOCK: Object as outside the scope. 5 You can go ahead and answer. 6 A. I found it -- interesting topics related to the 7 foreign national program that I lead. And at the time, 8 Ogletree was a client of ours. 9 Q. Would you explain to me the importance of 10 attending -- 11 A. I'm sorry. They were an attorney of ours, not 12 a client of ours. 13 Q. Got it. 14 Would you explain the importance of 15 attending law conferences as an HR professional? 16 MR. BABCOCK: Outside the scope, and 17 object to the form. 18 A. Found it important to -- to see if there are 19 any interesting new -- new areas or things that I 20 could -- could learn that maybe I could discuss with my 21 own attorneys, and as well as, you know, see if there's 22 any things -- things that we could incorporate into our 23 own program, make it more efficient and more effective. 24 Q. So you agree that it's important that HR 25 professionals understand basic workplace laws, true?</p>	<p style="text-align: right;">43</p> <p>1 As far as, you know, my involvement during 2 the investigation, you know, I do have regular coaching 3 sessions with my team on a -- you know, I think, weekly 4 or biweekly meeting. I don't know what my frequency is 5 with Michael. But, you know, we do discuss each of the 6 cases, and if there's any questions or lines of -- 7 avenues we're going down, we may have discussions about 8 that and/or recommendations. 9 Q. What was the date of the first report of 10 discrimination? Do you have that? 11 A. Yes. March 11th, 2019. 12 Q. And Michael Clark conducts that investigation, 13 true? 14 A. Yes. 15 Q. You select Michael Clark for -- to conduct that 16 investigation? 17 A. Yes, correct. 18 Q. And could you describe the process that he went 19 through for that investigation? 20 A. When I assign a case to him, he receives that 21 information. He reviews it. He formulates a plan and 22 puts together interview questions and who he's going to 23 be interviewing and data he needs to collect. He 24 conducts that investigation, formulates recommendations 25 and -- conclusions and any recommendations, if</p>
<p style="text-align: right;">42</p> <p>1 MR. BABCOCK: Object to the form. 2 A. Yes. 3 MS. SANFORD: Do you want a take a quick, 4 five-minute break? Is this a good time? 5 MR. BABCOCK: Yes. Thank you. 6 (Recess taken from 10:07 to 10:15.) 7 THE REPORTER: Back on the record at 8 10:15. 9 Q. How many reports of discrimination or 10 retaliation did Ms. Harris make at FedEx? 11 A. Ms. Harris filed -- or we -- we have three 12 cases, three EEO investigations that were conducted 13 internally. She filed a complaint with -- externally, I 14 believe, with the EEOC. That was investigated by legal. 15 And she filed two Explore cases with us as well. 16 Q. What was your involvement in any of those 17 complaints or investigations? 18 MR. BABCOCK: Object. That's outside the 19 scope, obviously. 20 I think you can tell by the question, but 21 go ahead and answer. 22 A. I believe I may have received an email from her 23 that initiated one of the investiga- -- one of the 24 investigations, and I may have responded to her in an 25 email.</p>	<p style="text-align: right;">44</p> <p>1 applicable. 2 Obviously, one of the things he's doing 3 early on in the investigation is, you know, working with 4 the lead -- business leadership or partner, the VP or 5 the director. I think in this situation, it would have 6 been a VP involved in -- in this given Michelle Lamb is 7 a director. Discussing the situation, gaining their 8 perspective, explaining the process to that -- to 9 that -- to that VP. 10 And after the -- his report is completed, 11 he will, you know, work with legal if there is any 12 review, you know, associated with that and if he has any 13 questions. And then he presents that information back 14 to the business for their review and consideration. And 15 if there are any types of recommendations that need to 16 be implemented, we leave the case open until all the -- 17 until all the recommendations are implemented. 18 We notify the complainant that the 19 investigation has been completed, sharing that, you 20 know, if there were any opportunities or corrective 21 action that was required, it would have been 22 implemented. And then we close that case out. 23 Q. I think you said if -- and correct me if I'm 24 wrong. I don't want to misstate anything. If Mr. Clark 25 had questions, he would go to legal.</p>

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<p style="text-align: right;">45</p> <p>1 Why would he not go to -- to you or HR? 2 Why would he go to legal instead? 3 A. He goes to me as well. As -- as I discussed in 4 my earlier answer, you know, we have regular meetings 5 and we talk about those things. 6 Sometimes -- sometimes those -- you know, 7 we seek legal guidance as well in those situations. If 8 it's -- and sometimes I direct the team members to go to 9 legal if it's something -- I don't feel that it's 10 something that I can answer directly and we'd like to 11 consult our attorneys. 12 Q. Did you direct Mr. Clark to legal in any of 13 those scenarios or cases with Ms. Harris? 14 A. I can't recall. I can't recall. 15 Q. You mentioned that Mr. Clark or the strategic 16 advisor would submit the report to the business for 17 review and recommendations. 18 "The business," do you mean the non-H- -- 19 what do you mean by "the business"?" 20 A. Yeah, as listed in the internal EEO policy, 21 that -- that section where it talks about the 22 investigation, it's either the director or the VP in 23 that situation are the appropriate leadership. 24 Q. So you submit it to the VP. In this -- 25 director of VP. In this case, VP Dave Russell, true?</p>	<p style="text-align: right;">47</p> <p>1 MR. BABCOCK: Have you got yours out? 2 THE WITNESS: Yes. I have it here. 3 Q. Is this the first investigation report done by 4 Mr. Clark for Ms. Harris's complaint in March? 5 A. It is. 6 Q. So when it says June 7, 2019, that is the date 7 that the investigation is completed, or what does that 8 date mean? 9 A. That is the date the report is completed and 10 signed by -- by the investigator. 11 Q. While an investigation is pending, is it 12 policy, practice -- or practice at FedEx to make sure 13 there is not any disciplinary action against the 14 complainant while investigation is pending? 15 A. Let me refer to the policy here. So according 16 to policy -- and the Bates number is FXS 1280 -- it 17 says, "Before the resolution of any discrimination, 18 harassment, or retaliation complaint, an employee may 19 not be involuntarily transferred, reassigned, or subjected 20 to any disciplinary action without concurrence from 21 Human Resources and Legal." 22 Q. Are you aware that Jennifer Harris was given a 23 letter of counseling and then a performance improvement 24 plan on June 26, 2019? 25 A. Refer to that documentation here. But it</p>
<p style="text-align: right;">46</p> <p>1 A. That would be correct, yes. 2 Q. And you have Dave Russell review it and give 3 recommendations, or how does that work? 4 A. Yeah, we share the findings and recommendations 5 and conclusions with -- with Dave. He -- or Michael 6 would have done that. And seeking agreement, or if 7 there's any -- that would be for the VP to review and 8 consider in making sure he's in agreement with those -- 9 with those recommendations. 10 Q. And you said you notify the complainant of a 11 complete investigation; is that true? 12 A. That is part of our process, yes. 13 Q. Do you tell the complainant the findings of 14 your investigation? 15 A. No, we don't. 16 Q. Do you consult with the complainant on who is 17 an appropriate witness to interview? 18 A. That is part of our process, yes. 19 Q. I'll share my screen with you. I'm showing you 20 a document. It's Bates-labeled FXS_ESI_0141750. It 21 goes all the way down to 141757. 22 A. What's the date of that invest- -- that 23 investigative report? 24 Q. It looks like it says June 7th, 2019. 25 A. Thank you.</p>	<p style="text-align: right;">48</p> <p>1 doesn't seem unreasonable as long as there was 2 concurrence, but let me take a look. I believe I have 3 the document here. 4 Q. I can share my screen, too. Are you seeing 5 this termination form? 6 A. Yeah, I've actually found -- yeah, I have -- 7 I'm referencing Bates FXS_ESI_0145375. States on 8 June 26 she received a letter of counseling for 9 unacceptable performance. 10 Q. And then when is Ms. Harris's next complaint of 11 discrimination or retaliation? I have September 6. 12 Does that sound about right to you? 13 A. That was an investigative report date of 14 September 6. I have a June 26, 2019, complaint. I 15 think that is, let's see, FX -- Bates FXE 7. 16 Q. All right. And is there investigation that 17 follows that complaint? 18 A. That complaint was investigated, and the report 19 was produced, signed on September 6, 2019. 20 Q. And what Bates number is that one? 21 A. FXS_ESI_0145369. 22 Q. And then Jennifer Harris receives a letter of 23 warning, and then a performance improvement plan was 24 created on September 13, 2019. 25 Does that sound right to you?</p>

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<p style="text-align: right;">49</p> <p>1 A. I'd have to go through the -- through the 2 documents to get the exact date, but I -- I can say that 3 she did receive a letter of warning subsequent to that. 4 And ... 5 Q. And then when is Ms. Harris's next complaint? 6 A. I show it being received on December 4th, 2019. 7 Q. And what Bates-number document are you looking 8 at? 9 A. It looks like it is FXE 351. 10 Q. And she is terminated on -- oh, is there a 11 report -- investigation or report done from that 12 complaint? 13 A. Yes. That's FXS_ESI_0142290. 14 Q. And when is that completed? 15 A. That has a report date of 12/31/2019. 16 Q. And she's terminated on January 7, true, 2020? 17 A. I don't have that information in front of me. 18 Q. All right. Let me go back and let's look at 19 the June 7, 2019, investigation report. It looks like 20 Michael Clark sends this to you and Linda Taylor. 21 Who is Linda Taylor? 22 A. Linda Taylor is a former HR manager with the 23 business consulting team. 24 Q. It states -- there's a section that says 25 "Witnesses: The following employees were interviewed."</p>	<p style="text-align: right;">51</p> <p>1 Ms. Harris's side and Ms. Lamb's side of the story. I 2 don't see any other people interviewed about -- in this 3 section, Section A. 4 A. That seems correct, yes. 5 Q. If we go to Section B, looks like we get 6 Ms. Harris's side of the story first, then Brian 7 Conrey's side of the story, and then Ms. Lamb's side of 8 the story. 9 Is that what it looks like to you? 10 A. Yeah. I mean, I'd have to go reread the 11 section to make sure there wasn't any miscellaneous 12 comments that specifically refer to any other 13 interviews, but I'm not seeing any other reference to 14 another interview in that section. 15 Q. If we move to Section C, it looks like you get 16 Ms. Harris's side of the story and then Ms. Lamb's side 17 of the story. 18 Do you see that? 19 A. Yes, correct. 20 Q. Section D, as in dog, looks like we get 21 Ms. Harris's side of the story and then Ms. Lamb's side 22 of the story, and then maybe -- is that -- is there 23 anybody -- does it look like Millner and Callahan's side 24 of the story, or is that just part of Ms. Lamb's 25 interview? Do you know?</p>
<p style="text-align: right;">50</p> <p>1 And it lists -- one, two, three, four -- five people 2 besides Ms. Harris. 3 Do you see that? 4 A. Yes. 5 Q. Do you see Michelle Lamb listed as a witness 6 that was interviewed in this box? 7 A. No. 8 Q. But when I look further down, it does look like 9 Michelle Lamb was interviewed. 10 A. It does. 11 Q. Do you know why it's not put in the witness 12 box? 13 A. I don't know the answer to that question. 14 MS. SANFORD: It looks like my computer's 15 being slow. 16 Q. It starts off under the investigation and 17 findings section. It looks like it's Ms. Harris's side 18 of the story. 19 Is that what it looks like to you? 20 A. It does. 21 Q. And then further down that page, it looks like 22 Michael Clark gets Ms. Lamb's side of the story. 23 Is that what it looks like to you? 24 A. It does. 25 Q. And that's it for that section. Just</p>	<p style="text-align: right;">52</p> <p>1 A. I don't know. That would be a question for 2 Michael. 3 Q. And then Section E, it looks like you've got 4 Ms. Harris's side of the story and then Ms. Lamb's side 5 of the story. No other witnesses or interviewees for 6 that section? 7 A. That appears to be correct, yes. 8 Q. And then there's an attachment. Attachment A 9 looks like a piece of documentary evidence, so not just 10 an interview. That's the first time we see that. True? 11 A. Yes. 12 Q. And then we come to a conclusion, 13 recommendations, Michael Clark's signature? 14 A. Correct. 15 Q. And then, of course, Attachment A, which is a 16 single email, follows. True? 17 A. True. 18 Q. So I want to go back to the witness section at 19 the top. How do we know any of these people -- well, 20 besides Ms. Harris, Brian Conrey, maybe even -- I can 21 see how you can know Brian Conrey was interviewed. 22 There's a specific section talking about his side of the 23 story. 24 But how do we know Rebecca Callahan, Jaime 25 Golden, Casey Millner, or Richard Holley were</p>

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<p style="text-align: right;">53</p> <p>1 interviewed and what they said as part of their 2 interviews?</p> <p>3 A. That would be part of Michael Clark's 4 investigative documentation.</p> <p>5 Q. So he would have a specific document that says, 6 I interviewed Richard Holley on "X" date and Richard 7 said "Y"?</p> <p>8 A. Correct.</p> <p>9 Q. Is that a policy or a procedure that FedEx has? 10 You have to keep records of interviewee notes?</p> <p>11 A. That is our practice.</p> <p>12 Q. How do you know it's followed, that the 13 investigator is doing that?</p> <p>14 A. We conduct reviews to make sure the documents 15 are -- are uploaded to our case management system.</p> <p>16 Q. Is there a specific --</p> <p>17 A. And we rely on -- and we rely on our employees 18 to follow the procedures as well.</p> <p>19 Q. When you say upload it to your system, is there 20 a specific, like, form that they have to upload that 21 says, I interviewed Richard Holley on "X" date; he said 22 "Y"?</p> <p>23 A. Yes. We call them the interview notes, and 24 those are documented and retained.</p> <p>25 Q. So "interview notes" is a specific --</p>	<p style="text-align: right;">55</p> <p>1 "As to the" -- specifically, it states, "As to the 2 adjustment on the BJ Services account, it was 3 unsubstantiated that Lamb was trying to hide anything 4 from Complainant."</p> <p>5 We go back up to the BJ Services section. 6 We have complainant's side of the story, Brian Conrey 7 says some things, and Lamb's side of the story. And 8 that's it.</p> <p>9 It doesn't look like the -- Michael Clark 10 looked at any documents, does it? Do you know if he 11 looked at any documents?</p> <p>12 A. I don't know the answer to that question.</p> <p>13 Q. It says, "Brian Conrey confirmed raising 14 concerns with Lamb about the negative adjustment 15 Complainant would receive due to a pricing error." 16 Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. It looks like Brian Conrey is confirming 19 something that the complainant says. 20 Is that what it looks like to you?</p> <p>21 A. I think his statement, you know, he raised a 22 concern with Lamb about the negative adjustment. I 23 don't -- I don't know.</p> <p>24 I'm sorry. Could you repeat that question 25 for me?</p>
<p style="text-align: right;">54</p> <p>1 "interview notes" is a specific document and form that 2 FedEx has that its investigators use to document when 3 they interviewed a witness and what the witness said?</p> <p>4 A. That's correct.</p> <p>5 Q. And if there are no interview notes, is it fair 6 to -- is it a fair conclusion that the investigator did 7 not interview a particular witness?</p> <p>8 MR. BABCOCK: Object to form.</p> <p>9 A. Yeah, I don't know, or it could be missing or 10 it could be misplaced. I mean, I would assume if we 11 interviewed someone, we'd have the notes.</p> <p>12 Q. But those notes do not go into this -- into an 13 investigation report?</p> <p>14 A. No.</p> <p>15 Q. I want to go to the conclusions section. The 16 conclusion section states, "None of the Complainant's 17 allegations is substantiated. As to the adjustment on 18 the BJ Services account, it was unsubstantiated that 19 Lamb was trying to hide anything from Complainant. 20 Complainant should not have attended the Pathways event 21 because Lamb had specifically instructed her not to do 22 so."</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. So let's just take the BJ Services section.</p>	<p style="text-align: right;">56</p> <p>1 Q. Yeah. It looks like Brian Conrey is confirming 2 that he agrees with Jennifer Harris about a pricing 3 error and a negative adjustment.</p> <p>4 A. It looks like he did raise a concern. I 5 can't -- I can't go to what Brian is truly stating 6 there, but it -- you know, I think his statement 7 basically says he raised a concern with Lamb about the 8 negative adjustment that she would receive. I don't 9 know if that -- if that directly goes to -- to the -- to 10 the conclusion that was made.</p> <p>11 Q. Well, do you see the first sentence on page 3 12 under Section B, as in boy? "Complainant alleges she 13 raised concerns on July 18, 2018, about the potential 14 \$1 million negative adjustment she would receive due to 15 a pricing error for this account."</p> <p>16 A. Uh-huh, yes.</p> <p>17 Q. And then Brian Conrey confirms raising concerns 18 with Lamb about the negative adjustment complainant 19 would receive due to a pricing error? Do you see that?</p> <p>20 A. I do see that.</p> <p>21 Q. So does that not look like to you that Brian 22 Conrey is confirming what Jennifer Harris is saying?</p> <p>23 MR. BABCOCK: Object to the form.</p> <p>24 A. I think he's saying -- based on this statement 25 alone, Brian Conrey is confirming -- confirmed raising</p>

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<p style="text-align: right;">57</p> <p>1 concerns with Lamb, that he brought up concerns with 2 Lamb about the negative adjustment. I don't know if 3 that's an agreement with Jennifer or not. 4 Q. It states in the middle, "Conrey researched the 5 issue and discovered there was a large billing error on 6 the account. Thus, Conrey asked Lamb if that account 7 could be returned to Complainant since he was not being 8 paid on the revenue and did not believe it was 9 appropriate for him to absorb the loss. Lamb was able 10 to move this account back to Complainant."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Did you know that part of -- or maybe you don't 14 know -- that this is not the normal process for moving 15 accounts and losses between district sales managers?</p> <p>16 MR. BABCOCK: Object as outside the scope.</p> <p>17 A. Yeah, I -- I was not aware.</p> <p>18 Q. It doesn't state that that was not the normal 19 process, does it?</p> <p>20 A. I --</p> <p>21 MR. BABCOCK: Object to the form.</p> <p>22 A. I don't recall reading that in the report.</p> <p>23 Q. It just says Lamb was able to do it, right?</p> <p>24 A. It does appear that Lamb did make that 25 adjustment, yes.</p>	<p style="text-align: right;">59</p> <p>1 issue, not the actual adjustment of the \$1 million loss? 2 A. Correct. 3 Q. Does a \$1 million loss sound like a really big 4 loss to you?</p> <p>5 MR. BABCOCK: Object to the form. Also, 6 outside the scope.</p> <p>7 A. I think in context of the rest of the testimony 8 and the rest of the report, I think that Michael lays 9 out Ms. Lamb's statement that she received a benefit 10 of -- of a significant amount of goal or revenue that 11 was not appropriate or was in error in some way and her 12 justification for making that adjustment was based on -- 13 on fairness to the program, to the future manager. 14 That's based on my review of that report.</p> <p>15 Q. I thought you just said it was a timing issue, 16 not an adjustment issue.</p> <p>17 A. That appears to be the case, yes, based on my 18 review of the report.</p> <p>19 Q. Do you think a district manager would notice if 20 there was a million-dollar loss on their account?</p> <p>21 MR. BABCOCK: Object to the form. Object 22 to the scope. Outside the scope. Excuse me.</p> <p>23 A. Yes.</p> <p>24 Q. And then it says in the conclusion, 25 "Complainant should not have attended the Pathways event</p>
<p style="text-align: right;">58</p> <p>1 Q. So if we go back to the conclusion, as to the 2 adjustment, it was unsubstantiated that Lamb was trying 3 to hide anything from complainant. It doesn't talk 4 about how Lamb actually made a negative adjustment to 5 the complainant, to Jennifer Harris, does it?</p> <p>6 A. No, it does not.</p> <p>7 Q. It doesn't address or conclude anything about 8 Ms. Harris's concern about getting a negative adjustment 9 for her goals, her attainment, her sales because of 10 Lamb's moving the BJ Services account, does it?</p> <p>11 MR. BABCOCK: Object to the form.</p> <p>12 A. It does not, but I think when you review the 13 entire section, I think there's -- the context is 14 important to -- to Michael's conclusion.</p> <p>15 Q. What do you mean?</p> <p>16 A. I think, you know, if I -- based on my view of 17 this issue, I think the concern from Michael at that 18 point may have been he was concerned that -- that 19 Ms. Harris would ultimately not learn about this 20 adjustment. I think his point he's trying to make here 21 is that based on Ms. Lamb's statement, it was a timing 22 issue more than anything and not -- not an intentional 23 hiding. It was just a timing issue. That's my 24 assessment based on reading the report.</p> <p>25 Q. So your assessment, this report is a timing</p>	<p style="text-align: right;">60</p> <p>1 because Lamb had specifically instructed her not to do 2 so."</p> <p>3 Those are the only two specific 4 conclusions I see. Is that what you see as well?</p> <p>5 A. Specific, yes. I think none of the other 6 allegations as substantiated addresses the others, but, 7 yes.</p> <p>8 Q. So after getting the complainant's side of the 9 story and Michelle Lamb's side of the story and for sure 10 interviewing one witness about BJ Services, Brian 11 Conrey, Michael Clark comes up with the conclusion the 12 allegations are unsubstantiated?</p> <p>13 MR. BABCOCK: Object to the form.</p> <p>14 Go ahead and answer.</p> <p>15 A. Yes.</p> <p>16 Q. Does it look like Michael Clark is giving the 17 benefit of the doubt to Michelle Lamb and not 18 Ms. Harris?</p> <p>19 MR. BABCOCK: Object to the form.</p> <p>20 A. I don't know if that's an accurate statement. 21 I believe he's conducted an investigation to the best of 22 his ability and conducted witnesses and gathered 23 evidence and made his conclusion.</p> <p>24 Q. What evidence did he gather?</p> <p>25 A. Somewhere there's an Exhibit A. Maybe I'm</p>

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<p style="text-align: right;">61</p> <p>1 confusing this with another. Let me take a look. 2 Q. There is an Exhibit A. 3 A. Yeah, Attachment -- Attachment A. 4 Q. The one single email that states Ms. Harris 5 wants to stay connected and consistent and schedule some 6 more one-on-ones? That's the only evidence Michael 7 Clark gathers for his investigation? 8 A. That is correct. 9 Q. Other than that, he relies on the testimony of 10 Michelle Lamb and Jennifer Harris? 11 MR. BABCOCK: Object to the form. 12 A. Yes, and the other witnesses that he -- that he 13 had interviewed as well. 14 Q. Well, we for sure know -- it looks like, at 15 least, he interviewed Brian Conrey about one specific 16 thing about BJ Services. I don't see in this report 17 where he interviewed anybody else or what the other 18 people said besides this one little -- this box. 19 Do you see anywhere in the report on what 20 Rebecca Callahan, Jaime Golden, Casey Millner, or 21 Richard Holley said? Confirmed? Denied? Supported? 22 Unsupported? 23 A. I don't see it in the report. 24 Q. And you notice -- 25 A. I think there was a section that referenced --</p>	<p style="text-align: right;">63</p> <p>1 these alleged witnesses, true? 2 A. True. 3 Q. There's not a column that mentions race, true? 4 A. That's correct. 5 Q. If there were a column that mentioned race, it 6 would say black or African American for Harris, white 7 for all the other witnesses, true? 8 A. I would have to research the -- the 9 demographics of those other individuals. 10 Q. You don't know that Brian Conrey -- 11 A. There would -- there would be a column that 12 would list the demograph- -- the race and a code 13 associated with that. 14 Q. Do you know that Brian Conrey is a white male? 15 A. I did not know that. 16 Q. Did you know Rebecca Callahan is a white 17 female? 18 A. I did not know that. 19 Q. Do you know Jaime Golden is a white female? 20 A. Did not know that. 21 Q. Did you know Casey Millner is a white female? 22 A. Did not know that. 23 Q. Did you know Richard Holley is a white male? 24 A. I didn't know that. 25 Q. Could it be a sign of race discrimination if</p>
<p style="text-align: right;">62</p> <p>1 I think we mentioned that we weren't -- I wasn't exactly 2 sure if that was -- that was the -- FXS_ESI_0141754, the 3 last paragraph that references Millner and Callahan. 4 Q. And Jennifer Harris makes a race discrimination 5 complaint, true? 6 A. I'm not sure. (Reviewing document.) 7 See a reference to discrimination, but not 8 on the basis of a protected status. 9 Q. So her protected status could be because she's 10 a woman or because of her race, true? Those are the two 11 options? 12 A. Could be. 13 Q. What other protected status does she have that 14 she could be discriminated against because of? 15 A. Well, I can certainly go through the list, but 16 I'm not familiar with the rest of her demographics. But 17 I can tell you that -- I just don't see a -- you know, 18 there wasn't a reference to race in this situation. 19 People use the term "discrimination" to 20 mean a lot of things. They're being treated 21 differently. And there was no specific reference to 22 race in her complaint -- 23 Q. Was there a specific reference to gender -- 24 A. -- or her sex. 25 Q. But there is a column that mentions the sex of</p>	<p style="text-align: right;">64</p> <p>1 white employees on a team are treated differently than a 2 black employee on the team? 3 MR. BABCOCK: Objection as outside the 4 scope. 5 A. I think it's worth -- worth considering, yes. 6 Q. If we go back down to the last page of the 7 report, there are some recommendations. It states, 8 "Director Lamb is coached to ensure she responds 9 accordingly to all of her managers regarding work 10 related questions in an effort to ensure any concerns 11 are addressed accordingly and timely to ensure accuracy 12 of reporting." 13 Do you see that? 14 A. I do. 15 Q. What does that mean? 16 A. I believe there is a reference to an allegation 17 where Michelle Lamb had not responded to the complainant 18 in a timely manner, and I believe that that is the 19 recommendation to resolve that type of issue from 20 occurring again. 21 Q. So even though everything is unsubstantiated in 22 this report, according to Michael Clark, he's 23 instructing Lamb to fix something? 24 MR. BABCOCK: Object to the form. 25 A. If I recall correctly, I think in this report,</p>

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<p style="text-align: right;">65</p> <p>1 it wasn't a primary allegation that -- that was one of 2 the specific allegations, that she wasn't responding to 3 her. But during the course of the interview, it was 4 discovered that -- that Michelle had not responded to 5 Michael [sic]. So Michael, to ensure that appropriate 6 conduct occurs in the future, put in a recommendation, 7 that particular recommendation.</p> <p>8 Q. Did you just say Michelle Lamb did not respond 9 to Michael Clark timely?</p> <p>10 A. No. I'm sorry. I meant to Ms. Harris.</p> <p>11 Q. So Michelle Lamb did not respond to Ms. Harris 12 timely. That part is true. But the rest of the 13 complaint is unsubstantiated?</p> <p>14 MR. BABCOCK: Object to the form.</p> <p>15 A. The specific allegations listed were not -- 16 were not substantiated, but I think we discovered there 17 was a secondary concern that was discovered that she 18 didn't respond to Ms. Harris. So Mr. Clark, Michael 19 Clark, entered that recommendation as a form of 20 corrective action.</p> <p>21 Q. All right. So to be clear, the report states 22 that none of the complainant's allegations are -- is 23 substantiated. However, Michael Clark did find that 24 Lamb did not respond to Ms. Harris timely and felt that 25 Ms. Lamb needed coaching to ensure that doesn't happen</p>	<p style="text-align: right;">67</p> <p>1 was communicated.</p> <p>2 Q. Do you know how he communicated -- Michael 3 Clark communicated the first bullet point recommendation 4 to Michelle Lamb?</p> <p>5 A. No, I don't.</p> <p>6 Q. So if there are recommendations in a report but 7 that report is confidential and Michelle Lamb and 8 Jennifer Harris don't get to see the report, how do they 9 know they have recommendations they have to fulfill?</p> <p>10 A. It -- our process is that Michael is to work 11 with appropriate people that he is recommending to 12 conduct corrective action and to not close out that -- 13 that -- that investigation until -- until all 14 recommendations have been implemented.</p> <p>15 Q. And would there be documentation showing a 16 recommendation is completed or given?</p> <p>17 MR. BABCOCK: Object to the form.</p> <p>18 A. Yes.</p> <p>19 Q. What type of documentation would that be?</p> <p>20 A. Should be a closure memo that is issued to 21 the -- to the parties who are responsible for 22 implementing that corrective action.</p> <p>23 Q. Let me show you -- I'm showing you -- it's 24 Bates-labeled FXS_ESI_141748.</p> <p>25 Is this a closure memo?</p>
<p style="text-align: right;">66</p> <p>1 again, true?</p> <p>2 MR. BABCOCK: Object to the form.</p> <p>3 A. I would add to that -- essentially true, but I 4 would also add that he -- that she didn't respond to 5 Ms. Harris in a timely manner, and that was the conduct 6 that was addressed through that recommendation.</p> <p>7 Q. So is it fair to say at least one thing 8 Ms. Harris said about Ms. Lamb, not responding in a 9 timely manner, was true?</p> <p>10 A. Yes, correct. Ms. -- Ms. Lamb did not respond 11 to Ms. Harris in a timely fashion related to one -- one 12 issue.</p> <p>13 Q. The second bullet point in the recommendations 14 category states, Complainant is coached to ensure that 15 she carries out instructions provided by her -- director 16 Lamb as they have been provided and not deviate without 17 prior approval from director Lamb.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. So it looks like this one is for Jennifer 21 Harris, true?</p> <p>22 A. True.</p> <p>23 Q. Do you know how Michael Clark communicated this 24 recommendation to Jennifer Harris?</p> <p>25 A. No, I don't have any reference to how that that</p>	<p style="text-align: right;">68</p> <p>1 A. It's a closure memo with the -- with the 2 complainant. That is not the closure memo I was 3 referencing.</p> <p>4 Q. Oh. So what were you referencing?</p> <p>5 A. It's another document that -- that -- that 6 Michael will complete and send to the individuals 7 responsible for implementing that. And it basically 8 outlines their responsibility and what they're to do. 9 Once completed, it's signed and sent back.</p> <p>10 Q. So in this -- hold on. In this particular 11 instance, a closure memo would be issued by Michael 12 Clark to Dave Russell to make sure that Jennifer -- 13 Michelle Lamb followed the recommendations?</p> <p>14 A. That would be correct. I'm not sure if Dave 15 Russell was -- was the individual. Sometimes we pick 16 alternate people to conduct that. But typically it 17 would be Dave Russell in that situation.</p> <p>18 Q. So I'm going to show this memo again to you.</p> <p>19 MR. BABCOCK: Ms. Sanford, what's the 20 Bates number on that again, please? I'm sorry.</p> <p>21 MS. SANFORD: 141748.</p> <p>22 Q. It says -- it's from Michael Clark to Jennifer. 23 Dear Jennifer: This letter is to notify 24 you regarding the closure of your Internal EEO 25 Complaint. Each issue brought forth has been thoroughly</p>

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<p style="text-align: right;">69</p> <p>1 investigated with the determination that corrective 2 action will be taken. 3 Thank you for bringing your concerns to 4 the attention to HR. Your complaint was treated 5 confidentially to the extent possible while still 6 allowing us to conduct a full investigation. The 7 identity of witnesses and information gathered is 8 confidential and therefore no additional information 9 will be provided.</p> <p>10 FedEx Services has a responsibility to 11 promote and foster a culture in which ethical conduct is 12 recognized, valued and exhibited by all team members. 13 Our commitment is to address alleged violations promptly 14 when they occur.</p> <p>15 If you have any questions or additional 16 concerns now or in the future, please contact me 17 directly. Regards, Michael Clark.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. So this is what Jennifer receives -- Jennifer 21 Harris receives about the investigation for her March 22 11th complaint, true?</p> <p>23 A. True. Correct.</p> <p>24 Q. She doesn't -- she does not get any other 25 information about the specifics of the report, who was</p>	<p style="text-align: right;">71</p> <p>1 Jennifer Harris receives a letter of counseling and 2 performance improvement plan. 3 Is that accurate? 4 MR. BABCOCK: Object. Outside the scope. 5 Go ahead.</p> <p>6 A. Let me refer to documentation here. 7 MR. BABCOCK: Just so you know, when you 8 mumble to yourself -- 9 THE WITNESS: Oh. 10 MR. BABCOCK: -- the court reporter needs 11 to transcribe that. 12 THE WITNESS: I'm sorry about that. 13 MR. BABCOCK: You're welcome to talk to 14 yourself. That's fine. Other witnesses do it. But she 15 might ask you to speak up because she has to be able 16 to -- if you make an audible sound, she's supposed to 17 record it. All right?</p> <p>18 THE WITNESS: Yeah. 19 A. Let me refer to the document here. 20 Okay. June 26th. Everything after June 21 26th is correct. 22 Q. So it's true that less than 30 days after a 23 report is completed about Ms. Harris's discrimination 24 complaint, she is put on a progressive discipline -- 25 she's put on disciplinary action, true?</p>
<p style="text-align: right;">70</p> <p>1 interviewed, what the interviewees said, true? 2 A. True. 3 Q. So if an interviewee contradicts Jennifer 4 Harris, she doesn't get to know or have a chance to 5 respond, to give a rebuttal to that conflicting answer, 6 does she? 7 MR. BABCOCK: Object to the form. 8 A. It is investigator discretion whether or not 9 something needs to be brought back to the -- to the 10 complaining party. It depends on a variety of factors. 11 Q. So the answer here is no, she did not get a 12 chance to rebut any contradictory statements, did she? 13 MR. BABCOCK: Form. 14 A. I can't tell by just looking at that document. 15 MS. SANFORD: All right. This is a good 16 time for a break. 17 (Recess taken from 11:04 to 11:13.) 18 THE REPORTER: Back on the record at 19 11:13. 20 Q. I'm going to share my screen with you again, 21 Mr. Chonoles. This is just a timeline I was making 22 while you -- while you were speaking. 23 So it looks like March 11, Jennifer Harris 24 makes her first report. The report was completed and 25 signed on June 7th. And less than 30 days later,</p>	<p style="text-align: right;">72</p> <p>1 A. True. 2 Q. Correct me if I'm wrong. I thought your policy 3 said that investigations should be completed within 30 4 days of a complaint unless they are complicated, but 5 then it looks to me that Jennifer Harris's complaint on 6 June 26 isn't completed until September 6, over 30 days. 7 A. That's true. That happened in that situation. 8 Q. Do you know why? Was it overly complicated? 9 A. I'd have to check with Michael Clark on that, 10 but, you know, if he has -- depending upon how he -- the 11 work he has to do in that investigation, it may take 12 longer than 30 days. We -- we strive to conduct a 13 thorough investigation as well as a timely 14 investigation. 15 Q. So your policy states that investigations 16 should be completed within 30 days to the extent 17 possible. And that was not done in this situation -- in 18 the situation involving Ms. Harris's second complaint. 19 True? 20 A. Let me refer back to the policy here. I'm 21 referencing on a document FXS 1280. It says time frames 22 are generally within 30 days depending upon the 23 complexity of the investigation. 24 Q. So your policy says generally investigations 25 should be completed within 30 days. And that was not --</p>

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<p style="text-align: right;">73</p> <p>1 that did not happen for Ms. Harris's second complaint. 2 True? 3 A. Well, it says that time frames are generally 4 within 30 days. And you are correct that it was not 5 completed within 30 days. 6 Q. Was the first report completed within 30 days, 7 Ms. Harris's report? 8 A. The complaint was received on March 11th, so it 9 would have been April 11th. And so, no, the report was 10 not completed within 30 days. 11 Q. It looks like the second report for 12 Ms. Harris's second complaint is completed on September 13 6th. Less than 30 days later, Ms. Harris receives a 14 second disciplinary action, a letter of warning, 15 performance improvement plan. 16 A. Let me refer to the document here. 17 MR. BABCOCK: What are you looking for, 18 Mac? Maybe -- 19 THE WITNESS: I've got it. I think I've 20 got it here. Sorry, a lot of documents. 21 A. So let's see here. Yes, so September 13th, 22 Michelle Lamb issued a letter of warning to Jennifer 23 Harris; that's correct. 24 Q. Michelle Lamb issues disciplinary action for 25 Ms. Harris less than 30 days after the second report</p>	<p style="text-align: right;">75</p> <p>1 A. True. 2 Q. So while she doesn't say race discrimination, 3 it seems pretty obvious that she's talking about race 4 discrimination based on the context of her complaint, 5 true? 6 A. Correct, based on that December 4th email. 7 Q. One sentence in the first paragraph, about 8 halfway down, says, "There are two of my white peers 9 Brian Hickman and Jaime Golden McElroy who have not hit 10 plan in 5 quarters yet have not" -- "haven't been issued 11 any discipline with an LOC or LOW or threats of 12 termination. Quarter to date Jaime has the lowest 13 performing district at 79.5 percent FY20Q2, which is the 14 same evaluation referenced in my LOC." 15 Do you see that? 16 A. I do. 17 Q. If someone is going to make a discrimination 18 complaint, you would want them to detail the types of 19 discrimination they are receiving, true? Like, race 20 discrimination: I'm being treated differently because 21 of the color of my skin. Right? 22 MR. BABCOCK: Object to the form. It's 23 outside the scope. 24 Go ahead and answer. 25 A. Yes.</p>
<p style="text-align: right;">74</p> <p>1 into Ms. Harris's second complaint, true? 2 A. True. 3 Q. And then if it's true -- I'll represent to you 4 it's true, but if it's true Jennifer Harris is 5 terminated on January 7th, that is less than 30 days 6 from the issuance of an investigative report into 7 Ms. Harris's third complaint. True? 8 A. Assuming that January 7th date is correct, yes. 9 Q. Pull up a different document for you, if I can 10 find it. 11 All right. I'm showing you -- it's 12 Bates-labeled 141844. This is -- I think this is the 13 December 4th third complaint you were speaking about for 14 Jennifer Harris. 15 A. Uh-huh. 16 Q. Is that a yes? 17 A. That's correct. Yes. 18 Q. She states, "Please see the details below of my 19 ongoing complaint of retaliation, humiliation, and 20 discrimination treatment by Michelle Lamb." 21 Do you see that? 22 A. I do. 23 Q. She doesn't say race discrimination there, but 24 she does say, "I am held to a different performance 25 standard than my white peers which is unfair," true?</p>	<p style="text-align: right;">76</p> <p>1 Q. You'd want them to list examples, right? 2 MR. BABCOCK: Object, outside the scope. 3 A. Yes. 4 Q. And Ms. Harris goes on and she details examples 5 in her email, true? 6 A. True. 7 Q. She gives examples about how her white peers 8 are not hitting plan and they're not receiving 9 disciplinary actions or threats of termination; and, in 10 contrast, she is receiving disciplinary action and 11 threats of termination? Is that what Ms. Harris is 12 saying? 13 MR. BABCOCK: Object to the form. 14 A. Could you repeat the question again? 15 Q. Ms. Harris states that some of her white peers 16 who are not hitting plan are not receiving disciplinary 17 action or threats of termination while at the same time 18 she is receiving threats of termination and disciplinary 19 action, which is unfair, and she states she's being held 20 to a different standard than her white peers? 21 A. Yes, that's what she's stating. 22 Q. And it's true that Michael Clark found 23 Ms. Harris's complaints, every time she complained, as 24 unsubstantiated, true? 25 A. Well, let me refer to the documentation on that</p>

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<p style="text-align: right;">77</p> <p>1 particular report. (Reviewing document.) 2 Yes. Conclusion, which is FX- -- the 3 document is FXS_ESI_0142290. Michael's conclusion was 4 "None of the Complainant's allegations is 5 substantiated." 6 Q. So in coming to that conclusion, did he go and 7 look at the spreadsheets, the plan, the goals, 8 performance of Ms. Harris's peers versus her? 9 A. Yes, he did. 10 Q. I'm going to show you -- it's FXS_ESI_144991. 11 I'll represent to you that these are Michelle Lamb's 12 notes. I think they're OneNotes, but they are her notes 13 that she created. 14 Have you seen these before? 15 A. I don't recall seeing those, no. 16 Q. Scrolling down to the second page, there's a 17 bullet point that says "Performance." Oh, let me go 18 back up to the date so we have some context here. So 19 this is April 23rd, 2019, leadership meeting, day one. 20 So April 2019. 21 It says, "One out of 6 regions are at plan 22 for Q4 currently." 23 Do you see that? 24 MR. BABCOCK: I'm going to object to this 25 line of questions as outside the scope based on the</p>	<p style="text-align: right;">79</p> <p>1 Q. And for a sales manager and for a sales 2 director, revenue and sales are pretty important goals, 3 true? 4 A. They are one of many, but it is an important 5 one, yes. 6 Q. So we don't know who this one is, but only one 7 out of Michelle Lamb's peers is meeting the plan. 8 That means the majority are not meeting 9 the plan, true? 10 A. That seems fair. 11 Q. And I haven't seen any evidence. Have you 12 seen -- do you know if any of the regional directors, 13 Michelle Lamb, was put on a performance improvement plan 14 or received any disciplinary action for not meeting the 15 plan? 16 A. I'm not aware of myself reviewing that, no. 17 Q. And do you see where it says only 14 of 56 18 DSMs, district sales managers, are above plan? 19 A. I do see that. 20 Q. So that's -- we're talking about now Jennifer 21 Harris's level, true? 22 A. That would be correct. 23 Q. And the majority are not meeting the plan, 24 based on Ms. Harris's [sic] notes, true? 25 A. That would be true.</p>
<p style="text-align: right;">78</p> <p>1 witness saying he hasn't reviewed this document. 2 But you can go ahead and answer. 3 A. Yeah. No, I do see that. 4 MS. SANFORD: And, Mr. Babcock, I'm fine 5 if this is a standing objection for this line of 6 questioning. 7 MR. BABCOCK: Thank you, Ms. Sanford. 8 Q. A region, that would be -- Michelle Lamb is 9 over a region, true? 10 A. That's correct. 11 Q. And then Jennifer Harris is over -- is a 12 district sales manager, less than a -- part of a region, 13 true? 14 A. Correct. 15 Q. So when it says one out of six regions are at 16 plan for Q4 currently, that means five out of six are 17 not meeting the plan, true? 18 A. True. 19 Q. And "plan" is a goal for an employee, true? 20 A. True. 21 Q. It's a metric used by FedEx to evaluate if the 22 employee is meeting expectations, true? 23 A. That particular expectation, yes. There are 24 many expectations, but that's -- it's probably 25 referencing revenue or goal attainment.</p>	<p style="text-align: right;">80</p> <p>1 Q. So if Ms. Harris is one of those that are not 2 meeting her plan, she's in the majority, true? 3 A. That would be true. 4 Q. Could it be a sign of discrimination if 5 Ms. Harris is put on a performance improvement plan and 6 receives disciplinary action for not meeting a plan when 7 white peers are also not meeting plan but not put on a 8 performance improvement plan? Could that be a red flag, 9 a sign of discrimination? 10 MR. BABCOCK: Object to the form. 11 A. I think it's something to look into for sure, 12 yes. 13 Q. I'm going to scroll to -- starts on page 14 145011. So this is September 2019. It's a conference 15 call. Jennifer Harris looks -- looks like she's on this 16 conference call. 17 Have you heard of a My FedEx Rewards 18 program? 19 A. No, I'm not familiar with that. 20 Q. If it is a program that Jennifer Harris was in 21 charge of, and then in September 2019 Casey Millner is 22 put in charge of the reward program, taking away 23 Jennifer Harris's responsibilities, a decision made by 24 Michelle Lamb, could that be a sign of discrimination, 25 taking away responsibilities from Ms. Harris and giving</p>

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<p style="text-align: right;">81</p> <p>1 it to a white peer?</p> <p>2 MR. BABCOCK: Object to the form.</p> <p>3 A. I think it's something worth understanding if 4 that was something we were made aware of. Yes, that 5 would have ...</p> <p>6 MS. SANFORD: Getting messy.</p> <p>7 Q. If it's true that Jennifer Harris was taken off 8 the My Rewards program and that was given to a white 9 peer less than 30 days after an investigation is 10 finalized about Ms. Harris's complaints of 11 discrimination or retaliation -- that was a bad 12 question. Let me start over.</p> <p>13 Taking away job responsibilities from an 14 employee is an adverse employment action, true?</p> <p>15 MR. BABCOCK: Object to the form. It's 16 outside the scope as well.</p> <p>17 Go ahead and answer.</p> <p>18 A. I believe it's something worth investigating to 19 determine if it is, the context and the reason for that, 20 and determine if it was -- what is the rationale. It 21 could be a -- could be a sign of discrimination.</p> <p>22 Q. And if that happens 30 days -- less than 30 23 days after a report of discrimination, could that be a 24 sign of retaliation?</p> <p>25 MR. BABCOCK: Same objection.</p>	<p style="text-align: right;">83</p> <p>1 Q. If we're looking at price activity, and 2 that's -- "YTD" means year to date; is that accurate?</p> <p>3 A. Correct. That's correct.</p> <p>4 Q. "FY20" means fiscal year 2020?</p> <p>5 A. That's correct.</p> <p>6 Q. It lists a table of Jennifer Harris and her 7 peers. Do you see that?</p> <p>8 A. I see -- I see that.</p> <p>9 Q. And if we're looking at comparative 10 information, looks like Brian Conrey's at the top, with 11 12.3. Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. And then looks like Brian Hickman is at the 14 bottom, 6.14. Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Then the next lowest is Casey Millner, at 6.25. 17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. And then we get to Jennifer Harris, at 6.6. Do 20 you see that?</p> <p>21 A. I do.</p> <p>22 Q. So there are two people, two peers, lower in 23 pricing activity than Jennifer Harris in November 2019, 24 according to Michelle Lamb's notes, true?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">82</p> <p>1 A. Yeah, I think it's something worth 2 investigating to see if it is, the context and the 3 rationale, and if it was a form of retaliation.</p> <p>4 Q. Let me go back to Ms. Lamb's notes.</p> <p>5 MR. BABCOCK: I'll just reinstitute my 6 standing objection.</p> <p>7 MS. SANFORD: Understood.</p> <p>8 MR. BABCOCK: I can't read what's popping 9 up, but there's stuff popping up on your screen.</p> <p>10 MS. SANFORD: They're my notes. I mean, 11 it's not -- it's work product, but it's not going to -- 12 it's fine.</p> <p>13 All right. So this is Bates-labeled 14 145018, for the record.</p> <p>15 Q. I'll represent to you L-- do you know "LHR" 16 means Longhorn Region staff meeting? I don't know if 17 you knew that.</p> <p>18 A. No. Thank you. Yeah, I wasn't aware of that.</p> <p>19 Q. The date says November 2019. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. And if we're looking at pricing activity, 22 pricing activity is another metric that FedEx looks at 23 to evaluate if an employee is meeting expectations, 24 true?</p> <p>25 A. True.</p>	<p style="text-align: right;">84</p> <p>1 Q. Michelle Lamb -- sorry. Jennifer Harris is 2 black, and her peers are white, true?</p> <p>3 A. That's based off your -- the information you've 4 provided me. I was not aware of that.</p> <p>5 Q. And it's true that Brian Hickman and Casey 6 Millner were not put on performance improvement plans, 7 and they did not receive disciplinary action, true?</p> <p>8 A. I'm going to have to refer back to the report. 9 So I'm referring to document FXS_ESI_0142288. Third 10 paragraph down, the middle of that paragraph, it states, 11 "Lamb further explained that while Golden McElroy's 12 performance is under plan, the performance has not been 13 under plan consistency for the same length of time. 14 Complainant's performance has. Lamb explained peer 15 employee Holley is the only other employee that had 16 consistently been under plan for the same length of time 17 as Complainant and also received discipline."</p> <p>18 MR. BABCOCK: Mr. Chonoles, her question 19 was about discipline and performance improvement plans, 20 I believe.</p> <p>21 THE WITNESS: Right.</p> <p>22 A. My answer was, is that's the only -- that's the 23 only corrective action that I'm aware of.</p> <p>24 Q. So Richard Holley received corrective action, 25 true?</p>

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<p style="text-align: right;">85</p> <p>1 A. True. 2 Q. Casey Millner did not receive corrective 3 action, true? 4 A. That's -- that's true. 5 Q. Brian Hickman did not receive corrective 6 action, true? 7 A. True. 8 Q. And at least in November 2019, Brian Hickman 9 and Casey Millner have lower performance -- sorry, lower 10 pricing activity numbers than Jennifer Harris, true? 11 A. True. 12 Q. Do you know what "CBT" stands for? 13 A. Closed business tracking. 14 Q. And we're looking at the closed business 15 tracking for Q1, fiscal year 2019, in this table. 16 Do you see that? 17 A. Yes. 18 Q. Looks like -- one, two, three -- four people, 19 peers, are lower than Jennifer Harris in this category. 20 Do you see that? 21 A. Let me review it one more time. 22 Q. Sure. 23 A. (Reviewing document.) Yes, true. 24 Q. Ms. Harris is in the top half of the closed 25 business tracking Q1 FY19 in November 2019 compared to</p>	<p style="text-align: right;">87</p> <p>1 A. Okay. 2 Q. Well ... 3 MR. BABCOCK: I think it was. Isn't there 4 a reverse arrow? There you go. 5 Q. It looks like -- one, two, three -- four people 6 are lower in this category, FY20 Q1 CBT average. 7 Do you see that? 8 A. Yes. 9 Q. So Ms. Harris is in the top half of her peers 10 in this category, true? 11 A. True. 12 Q. The -- Casey Millner, Brian Golden, and Brian 13 Hickman did not receive progressive discipline, true? 14 A. True. 15 Q. And in this instance, the average for FY20 Q1, 16 they are lower than Jennifer Harris, true? 17 A. I'm sorry. Could you repeat that question? 18 Q. Uh-huh. In this category, average FY20 Q1, 19 they are below Jennifer Harris? 20 A. Yes, that's true. 21 Q. I'll stop sharing. Too many things are going. 22 All right. Let me share my screen again 23 with you. This is the same page. This second box, 24 spreadsheet, entitled "Calls on Opps," F2F Calls on 25 Opportunities for week ending in -- October 28th, 2019,</p>
<p style="text-align: right;">86</p> <p>1 her peers? She's in the top half, true? 2 A. True. 3 Q. Let's see. Matthew Wheeler did not receive 4 progressive discipline, did he? 5 A. No. 6 Q. Casey Millner -- no. Excuse me. 7 Brian Hickman did not receive disciplinary 8 action, true? 9 A. True. 10 Q. Brian Golden did not receive disciplinary 11 action, true? 12 A. True. 13 Q. The next page looks at fiscal year '20 YTD. 14 Do you see that? 15 A. Yes. 16 Q. So this is -- 17 A. Could you scroll up for a second, go to the 18 prior page? 19 Q. Sure. 20 A. I want to see -- is there a header to that? 21 Q. Yeah. Give me one second. My computer is not 22 functioning correctly. 23 So there's not a header, but I'll tell you 24 that this is an average of CBT, closed business 25 tracking.</p>	<p style="text-align: right;">88</p> <p>1 do you see that? 2 A. Yes. 3 Q. And measuring number of calls, sales calls, is 4 a performance metric for district sales managers, true? 5 A. True. 6 Q. And do you see here that Jennifer Harris is 7 second out of all of her peers, out of eight? She's 8 second out of eight? 9 A. Yes. 10 Q. Could it be a sign of discrimination if 11 Jennifer Harris is -- let me -- let me rephrase this. 12 Do you know if Michael Clark went back and 13 looked at specific reports like the ones I'm showing you 14 to verify whether or not Michelle Lamb's general 15 statements of Ms. Harris underperforming consistently 16 was accurate or not? 17 A. Let me refer back to the documents to see if 18 there was any of these statistics included. (Reviewing 19 documents.) 20 I don't see anything attached to the 21 documents I have. Doesn't -- I can't see -- I can't 22 tell if he's referred back to any of those documents. 23 Q. Does it look like he just took Michelle Lamb's 24 word for it? 25 A. It's -- potentially.</p>

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<p style="text-align: right;">89</p> <p>1 Q. Do you know what "President's Club" is? 2 A. Yes. 3 Q. How would you explain that to a jury, if you 4 had to? 5 MR. BABCOCK: Object, outside the scope. 6 But go ahead and answer, sir. 7 A. The President's Club is for sales -- for 8 high-performing sales professionals who achieved good 9 results or outstanding results and based off a variety 10 of different metrics. And they are then chosen and 11 selected to participate in travel and meetings, usually 12 at -- at destinations that are fun. And there's usually 13 a lot of, you know, ceremonies and events to celebrate 14 the performance of those individuals. 15 Q. Is it true that some employees at FedEx go 16 their entire career and never make the President's Club? 17 MR. BABCOCK: Object to -- object. It's 18 outside the scope. 19 A. I don't know the answer to that. I would say 20 it's possible. 21 Q. Let me switch topics to insurance. 22 Does FedEx have an insurance policy that 23 covers claims by employees for discrimination and 24 retaliation, things like this? 25 A. Yes.</p>	<p style="text-align: left;">91</p> <p>1 THE REPORTER: Off the record at 11:50 2 a.m. 3 (Proceedings concluded at 11:50 a.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>																																																		
<p style="text-align: left;">90</p> <p>1 Q. And how much is that insurance policy? 2 A. So that -- FedEx's response -- let me ... 3 FedEx obtains primary employment practice liability 4 insurance which provides coverage to the company. The 5 company is responsible for covering claims up to 6 \$10 million. Any claims exceeding that will be covered, 7 up to 25 million, by the insurance provider. 8 Q. So anything up to \$10 million FedEx is 9 responsible for. Insurance kicks in after \$10 million. 10 True? 11 A. True. 12 Q. Is a good way of saying it, like, for a 13 layperson, would be FedEx is essentially self-insured up 14 to \$10 million? 15 A. That sounds fair. 16 Q. So that money comes out of FedEx's pocket if 17 it's less than \$10 million, true? 18 A. True. 19 MS. SANFORD: Let me check my notes. I 20 think I'm almost done. 21 (Brief pause.) 22 MS. SANFORD: All right. That's all the 23 questions I have for you today, Mr. Chonoles. 24 I'll pass the witness. 25 THE WITNESS: Thank you so much.</p>	<p style="text-align: left;">92</p> <table border="0"> <thead> <tr> <th style="text-align: left; width: 60%;">ERRATA</th> <th style="text-align: right; width: 40%;">DATE: MAY 11, 2022</th> </tr> <tr> <th style="text-align: left;">2 WITNESS: MAC CHONOLES</th> <th style="text-align: right;">REASON FOR CHANGE</th> </tr> <tr> <th style="text-align: left;">3 PAGE NO. LINE NO. CHANGE</th> <th></th> </tr> </thead> <tbody> <tr> <td>4</td> <td></td> </tr> <tr> <td>5</td> <td></td> </tr> <tr> <td>6</td> <td></td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8</td> <td></td> </tr> <tr> <td>9</td> <td></td> </tr> <tr> <td>10</td> <td></td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </tbody> </table>	ERRATA	DATE: MAY 11, 2022	2 WITNESS: MAC CHONOLES	REASON FOR CHANGE	3 PAGE NO. LINE NO. CHANGE		4		5		6		7		8		9		10		11		12		13		14		15		16		17		18		19		20		21		22		23		24		25	
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